THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.24689 of 2005

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Dated: 16.12.2005

Between:

K. Sivashankara Rao, S/o. Venkateswarlu,
District Scheduled Casts Services Coop. Society Ltd.
Machilipatnam, Sub-Division-II, Krishna District.

..... PETITIONER

AND

The Govt. of Andhra Pradesh rep. by its Principal Secretary,
Social Welfare Department, Secretariat, Hyderabad

and others.

.....RESPONDENTS

ORDER:

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The petitioner is employed as Deputy Executive Engineer in the A.P. Scheduled Castes Cooperative Finance Corporation Limited, Hyderabad, the second respondent herein. On the basis of a trap laid against him by the Anti Corruption Bureau, Government of Andhra Pradesh, prosecution was initiated against him under the Prevention of Corruption Act, 1988 (for short “the Act”). The proceedings are pending as C.C.No. 23 of 2003 before the Court of Special Judge for SPE & ACB cases, Vijayawada.

The Government of Andhra Pradesh, the first respondent herein, accorded sanction for prosecuting the petitioner through orders in G.O.Rt.No. 140, Social Welfare Department, dated 18.03.2003. The petitioner challenges the order of the Government stating that his appointing authority is the second respondent and the sanction accorded by the first respondent cannot constitute the basis for prosecuting him.

On behalf of the respondents, a counter-affidavit is filed. It is stated that though the appointing authority of the petitioner, in strict sense, is the second respondent, the Government, being the controlling and financing authority for the second respondent, has requisite power to accord sanction.

Learned counsel for the petitioner submits that the sanction, contemplated under Section 19 of the Act, is to be accorded by the appointing authority and not by any other agency or authority, either superior or inferior. He contends that unless the second respondent accords sanction, his client cannot be prosecuted at all.

Learned Government Pleader for Social Welfare and learned Standing Counsel for the second respondent, on the other hand, submit that though the second respondent is a Society, registered under the Cooperative Societies Act, it is fully under the control and administration of the Government. They contend that the appointments made by the second respondent are subject to approval and clearance by the first respondent, and in that view of the matter, no exception can be taken to the impugned order.

The petitioner challenges the order passed by the first respondent in G.O.Rt.No. 140, dated 18.03.2003, on the sole ground that the first respondent is not his appointing authority. It is true that the sanction, contemplated under Section 19 of the Act, is to be accorded by the appointing authority. The question as to whether the first respondent has any trapping of the appointing authority or whether it is the second respondent alone that is competent to accord such permission, cannot be gone into in this writ petition. As one of his grounds of defence, the petitioner can

certainly raise these questions before the Court, where he is facing prosecution.

Therefore, the writ petition is dismissed leaving it open to the petitioner to raise the question as to whether there existed prior sanction under Section 19 of the Act to prosecute the petitioner and the same shall be taken into account by the concerned Court at the appropriate stage. There shall be no order as to costs.

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16.12.2005

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